IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 833 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

HARSHADBHAI ZINABHAI DESAI

Versus

STATE OF GUJARAT

Appearance:

MR BB NAIK for Petitioner

MR RC KODEKAR for Respondents

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 16/04/2001

ORAL JUDGEMENT

#. Rule. Mr.Kodekar waives service of Rule on behalf of respondents.

#. Heard the learned counsel for the parties.

#. The learned counsel for the respondents states that in this matter, on completion of investigation in the criminal complaint filed by petitioner, chargesheet has already been submitted in the court. This statement of fact made by learned counsel for the respondents has not been controverted by learned counsel for the petitioner and as such, it is to be taken to be correct.

#. The facts of the case are that the petitioner is a practicing advocate and by virtue of his this position, it is true that he may have to appear in various matters in the court against many persons. It is stated that some proceedings are pending against the Sarpanch of village Lilapur, namely Shri Purshottambhai Laxmanbhai Lad in which the petitioner is appearing for the opposite party. On 27th August, 2000, when the petitioner was proceeding with his brother towards his field in the morning hours, Shri Purshottambhai with five other persons with various weapons attacked the petitioner and his brother and injured them and also committed offence of dacoity by snatching a gold chain which the petitioner was wearing around his neck and wrist watch which the petitioner was putting on his hand. For this incident, the petitioner filed a criminal complaint which was registered as C.R. No.I-181/2000 for offences punishable under Sections 143, 147, 148, 149, 395 of the Indian Penal Code and Section 135 of the Bombay Police Act with Valsad Rural Police Station. The police has arrested some of the accused. It is the grievance of the petitioner that the main accused Shri Purshottambhai Lad was not arrested immediately and even for a considerable time and till date, i.e. the date of filing of the petition. On 28th August, 2000, what the petitioner submits that the respondent No.2 wrote a letter to the learned Judicial Magistrate, First Class, Valsad, informing him that in the first information report lodged by petitioner, offence pertaining to section 395 of IPC is not made out during investigation and therefore, said section be deleted from the F.I.R. It is the grievance of the petitioner that the letter aforesaid was written by respondent No.2 because the remaining accused have filed application for bail on August 28, 2000 in the court of learned Judicial Magistrate, First Class, Valsad. The application for bail was granted on August 30, 2000 mainly on the ground that since the offence punishable under Section 395 of IPC is deleted, remaining offences are not serious and therefore, the accused were entitled to be released on bail. The petitioner states that the respondent No.2 wrote a letter dated 28th August, 2000 with an intention to see that the accused are released on bail forthwith and the accused No.1 Shri

Purshottambhai is not suspended from the post of Sarpanch of village Lilapur.

#. This petition has been filed by petitioner under Article 226 of the Constitution and therein, prayer has been made for quashing and setting aside the letter dated 28th August, 2000. Second prayer has been made for quashing and setting aside the order dated August 28, 2000 passed by the learned Judicial Magistrate, First Class, Valsad, releasing the original accused on bail only on the ground that the offence punishable under Section 395 is deleted from the FIR. Third prayer is made for direction to the State Government to hand over the investigation of criminal case by C.I.D. Crime, Gujarat State.

#. In view of the subsequent development which has taken place, in fact, this petition has become infructuous. Now the chargesheet has been submitted in this matter in the court. It is true and which is also admitted by learned counsel for the respondents that against the accused person, chargesheet has not been submitted for offence under Section 395 of IPC. The petitioner is free to raise a protest in the matter before the learned Judicial Magistrate. The petitioner is a practicing advocate and he would have known that being a complainant, he has all the right to raise a protest against chargesheet and where the Judicial Magistrate is convinced that sufficient evidence is available on record for taking cognizance against the accused persons under section 395 of IPC, it has all the power to order accordingly. After filing of the chargesheet, in fact, all these objections are to be raised before the learned Judicial Magistrate concerned. What the learned counsel for the petitioner submits that in view of this letter of respondent No.2, the Magistrate may not take any decision in the matter which is wholly misconceived and ill-founded approach. This letter is not final to the extent which is to be taken as binding on the Judicial Magistrate. It is always open to the Judicial Magistrate either on the protest of the complainant or on its own motion to consider the matter and where he is satisfied, even if a particular section of IPC is deleted, he can take cognizance.

#. So far as second prayer for quashing the order granting bail to the accused is concerned, it is suffice to say that if ultimately the chargesheet is framed under section 395 of IPC against the accused, it is always open to the Magistrate to reconsider the matter and to pass appropriate order for summoning of the accused by non

bailable warrant. This second prayer in fact, is consequential to the first prayer.

#. In the result, this special criminal application is dismissed as having become infructuous in the facts of the case aforesaid. However, in case the petitioner raised protest application against chargesheet, the learned Judicial Magistrate has to consider the same in accordance with law. Rule is accordingly discharged subject to the aforesaid directions. No order as to costs.

(S.K.Keshote, J.)

(sunil)